

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHI LIN, §
§
Petitioner, §
§
VS. § CIVIL ACTION NO. H-07-2992
§
MICHAEL CHERTOFF, *et al.*, §
§
Respondents §

ORDER

The respondents, Michael Chertoff, *et al.*, have filed a motion to dismiss the petition for writ of habeas corpus filed by Chi Lin on the basis that he is properly detained under 8 U.S.C. § 1231(a). Lin filed his petition for a writ of habeas corpus in September 2007. He asserted that he had been detained more than six months since his final removal order; that his removal is not likely in the reasonably foreseeable future; that no special circumstances justify his continued detention; and that his continued detention violates substantive due process.

On November 30, 2005, an immigration judge found Lin removable and ordered him removed to China under 8 U.S.C. § 1182(a)(7)(A)(i)(I). The Board of Immigration Appeals affirmed the decision, dismissing Lin's appeal on March 20, 2006. On May 16, 2006, the Fifth Circuit Court of Appeals stayed Lin's removal pending a review of the petition for review he had filed. That review concluded with a denial of the petition on September 24, 2007. Under the statute, if an alien is ordered removed, that order is judicially reviewed, and

a court stays the removal pending the review, the 90-day removal period begins on the “date of the court’s final order.” 8 U.S.C. § 1231(a)(1)(B)(ii). The Fifth Circuit’s final order issued on September 24, 2007. Despite the length of time Lin has been detained, the 90-day period after the court’s final order has not expired.

The petition for habeas corpus is denied on the current record.

SIGNED on December 20, 2007, at Houston, Texas.



Lee H. Rosenthal
United States District Judge